

## REMARKS

Upon entry of the above amendment, the claims will be 1 to 22.

The above amendment is responsive to points set forth in the Official Action.

In this regard, claim 1, step (a) now contains subject matter from page 6, lines 6 and 7 of the present specification. The significance of this feature will be discussed below.

Further, claims 11 and 13 have been amended by replacing the word "obtainable" by the word "obtained", responsive to the rejection of these claims under 35 U.S.C. 112.

The claims have been rejected on the ground of obviousness-type double patenting over claims 1 to 11 of co-pending application Serial No. 10/471,020. In reply, there is submitted herewith a Terminal Disclaimer which disclaims the terminal portion of any patent maturing from the present application which extends beyond the expiration date of any patent maturing from said co-pending application.

Claims 1, 2, 3, 5, 7, 8, 9, 11 and 12 have been rejected under 35 U.S.C. (a, b or e) as being anticipated by U.S. 6,194,605, abstract, cols. 2 to 3 and claim 1.

Further, claim 4 has been rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 6,194,605 (see abstract, claims).

These rejections are respectfully traversed.

The present invention relates to polyesters, that are polymers comprising a plurality of di- or polycarboxylic acid residues and a plurality of di- or polyol residues and which comprise also phosphinate ester (P-O-C) bonds. The polyesters according to the present invention are illustrated on page 6 of the description.

U.S. 6,194,605 relates to aluminum salts of dialkylphophinic acids or alkylated diphosphinic acids corresponding to structures I and II (see abstract).

These aluminum salts of formula I and II are clearly not polyesters.

Hence the process of claims 1 and 3 as well as all other claims referring thereto are clearly novel and unobvious over U.S. 6,194,605.

Claims 6 and 13 to 21 have been rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 6,194,605, (see abstract, claims) in view of U.S. 4,269,727.

This rejection is also respectfully traversed.

U.S. 6,194,605 relates to aluminum salts of dialkylphosphinic acids or alkylated diphosphinic acids corresponding to structures I and II (see abstract) which can be obtained from high temperature hydrolysis of the corresponding alkyl esters.

U.S. 4,269,727 is related to radiation curable phosphates, more specifically to those of the formula presented in claim 1 at col. 8.

These are two completely different kinds of products and hence the one skilled in the art would not combine documents related to phosphates with documents related to a process for hydrolyzing phosphinic esters.

Moreover, were the one skilled in the art to combine the teachings of both prior art documents, he would not come to the polyesters of the present invention. Indeed, neither the phosphinic acids of U.S. 6,194,605, nor the phosphates of U.S. 4,269,727 are polyesters such as those of the present invention.

Hence, the process of claim 1 as well as all other claims dependent thereon are clearly not obvious over U.S. 6,194,605 alone or in combination with U.S. 4,269,727.

Claims 1 to 21 have been rejected under 35 U.S.C. 102(b) as being anticipated by JP 2001-159050 (abstract) or JP 55-060524 (abstract).

This rejection is also respectfully traversed.

Please note that both references have been cited in the description at page 4 of the description.

JP 2001-159050 and JP 55-6524 do not describe or suggest polyesters as in the present invention. The phosphorus containing carboxylic acid of the formula I disclosed in JP 55-6524 (abstract) is not hydrolyzed by hydrolyzing the phosphinate ester P-O-C bonds as in the present invention. Instead, water-dispersibility is obtained from incorporating metal sulfonate groups.

For the foregoing reasons, it is apparent that the rejections on prior art are untenable and should be withdrawn.

No further issues remaining, allowance of this application is respectfully requested.

If the Examiner has any comments or proposals for expediting prosecution, please

contact undersigned at the telephone number below.

Respectfully submitted,

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